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THE JUSTICES' FORGOTTEN DEBUTS

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Excitement surrounds a new Justice's introduction on the Supreme Court. "All Eyes on Newest Justice as Court Opens Its Term," a *New York Times* headline declared following Justice Elena Kagan's first Monday in October as a member of the Court.[1] But when that Justice issues his or her first majority opinion—let's call this the "debut"—the excitement fades into apathy. Kagan debuted in a bankruptcy appeal[2] greeted by the *Los Angeles Times* as one not "likely to be remembered by history."[3] For good measure, the paper poured salt on the wound: "New justices rarely are given important cases in their first term, and Kagan's initial effort proved to be no exception."[4]

Savage. But the general point is well-taken: Who remembers the Justices' debuts? We identify Chief Justice Earl Warren with his landmark desegregation opinion in *Brown v. Board of Education*,[5] but did you know that his debut settled a dispute about the Longshoremen's and Harbor Workers' Compensation Act's notice-of-injury requirement?[6] Or take the most recently retired Justice, Anthony Kennedy, who many recall for his momentous opinions in *Obergefell v. Hodges*[7] and *Citizens United v. FEC*.[8] Do you remember his debut about the requirements for a healthcare provider's challenge

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1. Adam Liptak, *All Eyes on Newest Justice as Court Opens Its Term*, N.Y. TIMES, Oct. 5, 2010, at A17.

2. Ransom v. FIA Card Servs., 562 U.S. 61 (2011).

3. David G. Savage, *Kagan Writes Her 1st Court Opinion*, L.A. TIMES (Jan. 12, 2011), https://www.latimes.com/archives/la-xpm-2011-jan-12-la-na-court-kagan-20110112-story.html [https://perma.cc/HJ3C-QXAF].

4. *Id.*

5. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

6. Voris v. Eikel, 346 U.S. 328 (1953).

7. Obergefell v. Hodges, 135 S. Ct. 2584 (2015).

8. Citizens United v. FEC, 558 U.S. 310 (2010).

to a Medicare regulation's validity?[9] Can any of us name *any* Justice's debut?

This essay shines a spotlight on the Justices' forgotten debuts. Using citation analysis, it reveals surprising results: although the vast majority of Justices debuted in insignificant cases appropriately lost to time, some debuted in cases that, though perhaps unimportant at first glance, remain jurisprudentially influential today.

I. METHODOLOGY

With three exceptions, this study covers every debut since the Founding. First, because this essay's focus is on a Justice's first majority opinion on the Court, I only include the Associate Justice debuts of Edward White, Charles Evan Hughes, Harlan Stone, and William Rehnquist. Second, as some Justices debuted with multiple opinions on the same day, I count as their debut the opinion that first appeared in the official reporter of decisions.[10] Third, I include Justice Brett Kavanaugh's debut[11] only for purposes of counting subject matter and type, as it is too recent to collect meaningful citation data.

To measure influence, I use simple citation analysis. That methodology is easy to criticize,[12] but it provides a readily understandable, objective measure of an opinion's jurisprudential impact.[13] To keep this essay short, I do not distinguish between type of citation—for example, court level, reported status, or caselaw versus secondary source. No matter the medium, the author's decision to cite a particular opinion demonstrates a "latent judgment" about that opinion's importance in the universe of legal opinions.[14]

I collect the data from Westlaw's database as of June 2019. Because this database does not show whether a citation is to a majority opinion rather than a concurring or dissenting opinion, I count all

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9. Bethesda Hosp. Ass'n v. Bowen, 485 U.S. 399 (1988).

10. For the earliest decisions, I rely on dates provided by the Supreme Court's research. *See generally* ANNE ASHMORE, LIBRARY OF THE SUPREME COURT OF THE UNITED STATES, DATES OF SUPREME COURT DECISIONS AND ARGUMENTS (2006), https://www.supremecourt.gov/opinions/datesofdecisions.pdf [https://perma.cc/H56B-WLAW].

11. Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524 (2019).

12. *See, e.g.*, William M. Landes, Lawrence Lessig & Michael E. Solimine, *Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges*, 27 J. LEGAL STUD. 271, 271–76 (1998).

13. For those readers seeking regression or network analyses, this is not that kind of study. To paraphrase Keyrock: "I'm just an appellate lawyer. Your world frightens and confuses me." *See very generally Saturday Night Live: Unfrozen Caveman Lawyer* (NBC television broadcast Nov. 23, 1991).

14. James H. Fowler & Sangick Jeon, *The Authority of Supreme Court Precedent*, 30 SOC. NETWORKS 16, 18 (2008).

citations. But this drawback is minor, for even if the author cites a concurrence or dissent, the citation still speaks to the debut's overall influence within the legal network.

This study initially categorizes the debuts by date before grouping them as a whole. I use four time periods based on major judiciary acts and the rise of computerized legal research: (1) the Founding era, from 1792 to 1875; (2) the 1875 Act,[15] from 1875 to 1925; (3) the 1925 Act,[16] from 1925 to 1976; and (4) the Modern era, from 1976 to the present.

Finally, I code debuts by subject category: Common Law, Constitutional Law, Economic Activity, Procedure, Statutory Interpretation, and Other. The Common Law category consists of admiralty, contracts, property, and torts cases. Under Economic Activity, I include cases involving bankruptcy, labor and employment, taxation, and general economic activity. Finally, civil, criminal, and judicial procedure cases fall under the Procedure category, as well as those involving arbitration.[17]

II. DATA

A. Founding: 1792–1875

The Court's first eighty years saw forty-three Justices join the bench. Some early Justices debuted in *seriatim* opinions, as in *Georgia v. Brailsford*,[18] the Court's first detailed written opinion.[19] Although Chief Justice John Marshall's influence in driving the Court from *seriatim* to majority opinions is well-known,[20] his immediate predecessor Chief Justice Oliver Ellsworth had the Court's first debut majority opinion in *Clarke v. Russel*.[21]

15. Jurisdiction and Removal Act of 1875, 18 Stat. 470.

16. Judiciary Act of 1925, 43 Stat. 936.

17. Although arbitration cases could fall under Economic Activity or Statutory Interpretation, I include them under Procedure because they ultimately concern the proper venue for a civil dispute.

18. Georgia v. Brailsford, 2 U.S. (2 Dall.) 415 (1793).

19. The first opinion of the Court, *West v. Barnes*, 2 U.S. (2 Dall.) 401 (1791), was a brief, unanimous opinion without authorship.

20. *See, e.g.*, PETER C. HOFFER, WILLIAMJAMES H. HOFFER & N.E.H. HULL, THE SUPREME COURT: AN ESSENTIAL HISTORY 52 (2007).

21. Clarke v. Russel, 3 U.S. (3 Dall.) 415 (1799).

Table 1: Debuts by Subject, Founding Era

RANK	SUBJECT	NUMBER
1	Common Law	17
2	Procedure	16
3	Constitutional Law	4
4	Statutory Interpretation	3
5	Other *(Slavery)*	2
6	Economic Activity	1

Of the Founding era's 43 debuts, two general topics dominate the list: Common Law and Procedure. These topics' prevalence makes sense considering the Court's infancy and the expansive scope of its mandatory jurisdiction. All of the procedural debuts specifically concerned judicial procedure. The Court, though borrowing much from its English roots, was building a judiciary from scratch, which meant that its early business included setting the rules of decision. And as to the common law debuts, the Founding-era Justices did not enjoy today's luxury of selecting which cases to hear. So everyday disputes that today's Court would never hear—for example, the contractual dispute that led to Ellsworth's debut—regularly reached the Court.

Table 2: Rankings by Total Citations, Founding Era
(‡ = seriatim opinion)

RANK (OVERALL)	JUSTICE	OPINION	SUBJECT	TOTAL
1 (15)	Chase, Samuel‡	*Ware v. Hylton* (1796)	Constitutional Law	947
2 (25)	Marshall, C.J.	*Talbot v. Seeman* (1801)	Constitutional Law	511
3 (32)	Clifford	*Goodman v. Simmonds* (1858)	Common Law *(Contracts)*	338
4 (33)	Moore‡	*Bas v. Tingy* (1800)	Constitutional Law	332
5 (38)	Paterson‡	*Penhallow v. Doane's Administrator's* (1795)	Common Law *(Admiralty)*	256
6 (40)	Rutledge, C.J.‡	*Talbot v. Jansen* (1795)	Common Law *(Admiralty)*	249
T-7 (41)	Hunt	*Washington & G.R. Company v. Gladmon* (1873)	Common Law *(Torts)*	246
T-7 (41)	Trimble	*Edwards' Lessee v. Darby* (1827)	Statutory Interpretation	246
9 (47)	McLean	*Bank of U.S. v. Dunn* (1832)	Common Law *(Contracts)*	219
10 (48)	Baldwin	*Jackson v. Lamphire* (1830)	Constitutional Law	205

Of the Founding Era's top ten debuts, common and constitutional law cases run away from the pack, each accounting for four debuts on the list. Interestingly, despite the subject's dominance in terms of overall debuts, no procedural opinion makes the top ten.

The four constitutional-law debuts comprise less than ten percent of the Founding era's debuts, yet each are amongst the period's ten most heavily cited debuts. The top two—Justice Samuel Chase's debut in *Ware v. Hylton*[22] and Marshall's debut in *Talbot v. Seeman*[23]—far surpassed their counterparts. Both set important principles of early constitutional law. In *seriatim* opinions in *Ware*, the Court held that a

22. Ware v. Hylton, 3 U.S. (3 Dall.) 199 (1796).
23. Talbot v. Seeman, 5 U.S. (1 Cranch) 1 (1801).

federal treaty supersedes state law.[24] *Talbot* specifically concerned the laws of salvage governing the capture of ships owned by neutral and hostile nations, a case which today seems wholly antiquated. But in his majority-opinion debut, Marshall voiced the renowned maxim that the Constitution vests Congress alone with "[t]he whole powers of war."[25]

B. 1875 Act: 1875–1925

The Court's docket swelled dramatically after the Civil War. In his famous study of the Court's historical docket, then-Professor Felix Frankfurter explained that three postwar trends accounted for the huge docket increase: industrial development, the extension of federal law over matters traditionally reserved to the States, and the expansion of federal jurisdiction over cases previously decided by state courts.[26] That third trend fueled the first two.

The largest expansion of federal jurisdiction came through the Jurisdiction and Removal Act of 1875.[27] As Tracey George notes, "Before Reconstruction, disputes over federal law generally were resolved by state, not federal, courts."[28] The 1875 Act created federal-question jurisdiction, something we now take for granted.

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24. *Ware*, 3 U.S. (3 Dall.) at 236–37.

25. *Talbot*, 5 U.S. (1 Cranch) at 28.

26. Felix Frankfurter, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System*, 39 HARV. L. REV. 35, 39 (1925).

27. *Id.* at 40–43.

28. Tracey E. George, *From Judge to Justice: Social Background Theory and the Supreme Court*, 86 N.C. L. REV. 1333, 1339 (2008).

Table 3: Debuts by Subject, 1875 Act

RANK	SUBJECT	NUMBER
1	Common Law	11
2	Economic Activity	9
3	Constitutional Law	4
4	Procedure	3
5	Statutory Interpretation	2
6	Other *(Immigration)*	1

Thirty Justices debuted in the fifty years following the 1875 Act. As in the Founding era, the largest proportion of debuts from this period (about one-third) continued to arise from common law disputes. The Court may have heard increasingly new types of cases, but its mandatory jurisdiction ensured that common law cases would continue to account for a large portion of its docket.

Instead, the nation's increased economic development—coupled with new federal laws affecting economic matters—accounted for the biggest docket shift. While only 2 percent of Founding era debuts involved Economic Activity (a single debut), that proportion grew to 30 percent during this period. Meanwhile, the number of Procedure debuts dropped from roughly 33 percent to 10 percent.

Table 4: Rankings by Total Citations, 1875 Act
(= debut with at least one dissenting opinion)*

Rank	Justice	Opinion	Subject	Total
1 (7)	Van Devanter	*Lindsley v. Natural Carbonic Gas Company* (1911)	Constitutional Law	2001
2 (21)	Sutherland	*Takao Ozawa v. U.S.* (1922)	Other *(Immigration)*	672
3 (27)	Gray	*U.S. v. McBratney* (1882)	Procedure *(Criminal)*	458
4 (35)	Holmes*	*Otis v. Parker* (1903)	Constitutional Law	295
5 (38)	Day	*Martin v. Steamship Southwark* (1903)	Common Law *(Admiralty)*	256
6 (43)	Harlan I	*First National Bank v. Hartford Fire Insurance* (1878)	Common Law *(Contracts)*	244
7 (44)	Lamar	*Southern Development v. Silva* (1888)	Common Law *(Contracts)*	242
8 (45)	Butler	*U.S. v. Oklahoma* (1923)	Statutory Interpretation	231
9 (46)	Stone	*May v. Henderson* (1925)	Procedure *(Civil)*	222
10 (53)	Shiras*	*Morley v. Lake Shore & Michigan Southern Railway* (1892)	Common Law *(Contracts)*	149

The 1875 Act period featured a few debuts that are still discussed today. Coming in at third place was Justice Horace Gray's debut in *United States v. McBratney*,[29] which set important limits on criminal jurisdiction over acts committed within Indian Country—a topic of

29. United States v. McBratney, 104 U.S. 621 (1881).

renewed interest to the Court.[30] Next, in second place, Justice George Sutherland debuted in *Takao Ozawa v. United States*,[31] an infamous immigration case holding that the Immigration Act of 1906—allowing only for the naturalization of "free white persons" and persons of African descent—excluded those of Japanese descent.[32] *Takao Ozawa* reinforced the nation's existing anti-Asian immigration policy, which did not end until after World War II.[33]

But towering over all debuts so far is Justice Willis Van Devanter's debut in *Lindsley v. Natural Carbonic Gas Company*.[34] *Natural Carbonic* upheld a New York law prohibiting pumping in certain areas to protect the state's mineral springs. But, as first-year Constitutional Law students learn, it serves as the foundational case establishing rational basis review for an equal protection challenge to legislation. Understandably, Van Devanter's debut remains greatly influential.

C. 1925 Act: 1925–1976

The Judiciary Act of 1925 transformed the Court's docket. The Court had received some docket relief through the Evarts Act of 1891, which created the intermediate circuit courts of appeals.[35] Yet a substantial majority of the Court's docket continued to arise through mandatory appellate jurisdiction. The Judiciary Act gave the Justices what they long had sought: the power to select which cases to hear.[36] With much of its mandatory jurisdiction swept away, the Court no longer would be consumed by "petty litigation."[37] It could instead focus on hearing only those cases of genuine national importance.

30. *See* Murphy v. Royal, 875 F.3d 896 (10th Cir. 2017), *cert. granted*, Carpenter v. Murphy, 138 S. Ct. 2026 (2018); McGirt v. Oklahoma, PC-2018-1057 (Okla. Crim. App. Feb. 25, 2019), *cert. granted*, 140 S. Ct. 659 (2019).

31. Takao Ozawa v. United States, 260 U.S. 178 (1922).

32. *Id.* at 196–98.

33. *See* Kevin R. Johnson & Bill Ong Hing, *National Identity in a Multicultural Nation: The Challenge of Immigration Law and Immigrants*, 103 MICH. L. REV. 1347, 1373 (2005).

34. Lindsley v. Nat. Carbonic Gas Co., 220 U.S. 61 (1911).

35. Frankfurter, *supra* note 26, at 76–81.

36. Felix Frankfurter & James M. Landis, *The Supreme Court under the Judiciary Act of 1925*, 42 HARV. L. REV. 1, 1–3 (1928).

37. Felix Frankfurter & James M. Landis, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System*, 40 HARV. L. REV. 1110, 1110–11 (1927).

Table 5: Debuts by Subject, 1925 Act

RANK	SUBJECT	NUMBER
1	Economic Activity	15
2	Procedure	5
3	Constitutional Law	4
4	Common Law	2
5 *(tie)*	Statutory Interpretation	1
5 *(tie)*	Other *(Administrative Law)*	1

The twenty-eight debuts during the 1925 Act period reflect the Court's changed docket. Common-law cases all but disappear from the list, with the only two involving admiralty. In fact, for the first time, each debut involved truly federal issues.

Debuts involving Economic Activity comprised over 50 percent of the period's debuts. Again, this demonstrated the times. Federal taxation—making up nearly half of these debuts—was a relatively new issue: The Sixteenth Amendment, authorizing a federal income tax, was enacted in 1916. And the Great Depression and later World War II brought significant changes to the national economy. These two developments resulted in a myriad of legal challenges to the nation's growing number of economic laws.

Table 6: Rankings by Total Citations, 1925 Act
(† = debut with at least one concurring opinion)

RANK	JUSTICE	OPINION	SUBJECT	TOTAL
1 (2)	Vinson, C.J.*	*U.S. v. United Mine Workers* (1946)	Procedure *(Judicial)*	4153
2 (5)	Stevens	*Matthews v. Diaz* (1976)	Constitutional Law	2589
3 (8)	Marshall, T.	*Mempa v. Rhay* (1967)	Procedure *(Criminal)*	1868
4 (9)	Rehnquist*	*Schneble v. Florida* (1972)	Procedure *(Criminal)*	1315
5 (10)	White, B.	*Atkinson v. Sinclair Refining Company* (1962)	Economic Activity *(Labor & Employment)*	1314
6 (11)	Goldberg*	*U.S. v. Loew's* (1962)	Economic Activity *(Competition)*	1299
7 (13)	Byrnes†	*Edwards v. California* (1941)	Constitutional Law	1096
8 (14)	Whittaker*	*Fourco Glass v. Transmirra Products* (1957)	Procedure *(Civil)*	995
9 (16)	Roberts, O.	*Poe v. Seaborn* (1930)	Economic Activity *(Taxation)*	881
10 (17)	Blackmun*	*Wyman v. James* (1971)	Constitutional Law	878

Although economic cases dominated the Justices' debuts during this period, only three such debuts made the top ten. Debuts on Procedure (four) and Constitutional Law (three) round out the remainder. For the first time, no common law case appears on the list.

This period featured a number of debuts that have been heavily cited—far more in comparison to the top ten debuts from the Founding and 1875 Act periods. Some of that reflects the natural assumption that the more recent the debut, the greater likelihood of continued

citation.[38] But a better reason derives from the simple fact that these Justices' debuts featured significant holdings that remain relevant today.

Nowhere is that truer than the period's top three debuts. In third place, Justice Thurgood Marshall—a staunch defender of criminal defendants' rights—appropriately debuted in a case securing a defendant's right to appointed counsel "at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected."[39] Next, Justice John Paul Stevens took second place for his debut in *Matthews v. Diaz*,[40] which upheld Congress's power to enact legislation distinguishing between different groups of immigrants as consistent with due process.

But standing far above the others was Chief Justice Fred Vinson's first-place debut in *United States v. United Mine Workers*.[41] Most remember this case for its historical context: President Harry Truman issued an executive order seizing most of the nation's coal mines to prohibit labor unrest from paralyzing the post-World War II economic recovery.[42] The United Mine Workers responded by announcing its intentions to terminate its labor agreement with the federal government and to strike.[43] The government sued for a declaration that the union had no unilateral authority to terminate the agreement and an injunction prohibiting a strike.[44] After the district court temporarily granted that injunctive relief, the union ignored the order and initiated a strike.[45]

The district court ordered the union to show cause why it should not be held in contempt.[46] The union countered that the court lacked jurisdiction to enter its order because the Norris–LaGuardia Act generally barred courts from issuing injunctions to prohibit labor strikes.[47] The court disagreed and, after a hearing, held the union in

38. *See, e.g.*, William M. Landes & Richard A. Posner, *Legal Precedent: A Theoretical and Empirical Analysis*, 19 J.L. & ECON. 249, 250–51 (1976).

39. Mempa v. Rhay, 389 U.S. 128, 134 (1967).

40. Matthews v. Diaz, 426 U.S. 67 (1976).

41. United States v. United Mine Workers, 330 U.S. 258 (1947).

42. *Id.* at 262 n.1.

43. *Id.* at 265.

44. *Id.* at 265–66.

45. *Id.* at 266–67.

46. *Id.* at 267.

47. *Id.* at 267–68.

civil and criminal contempt.[48] On the union's request, the Supreme Court granted certiorari before judgment in the circuit court.

Writing for a deeply fractured Court, Vinson determined that the district court was correct: The Norris–LaGuardia Act only applied to disputes between *private* employers and employees, not the federal government as employer.[49]

If the case ended there, Vinson's debut likely would remain known strictly for its place in this larger story. But *United Mine Workers* also concerned a broader issue, of far greater impact, about the inherent power of federal courts. In his debut, Vinson explained that a district court has jurisdiction to determine its own jurisdiction, allowing it to enter binding orders during that jurisdictional determination.[50] Because of the order's binding nature—no matter the possibility of reversal on appeal—a court has inherent authority to hold a party in contempt for refusing to abide by its order. In subsidiary holdings, *United Mine Workers* also established a district court's authority to use a single proceeding to find a party in both civil and criminal contempt, as well as principles for fixing the amount of sanctions.

United Mine Workers was more than a case about the governmental seizure of coal mines and organized labor's power to strike. At its core, the case concerned judicial power: the power of contempt. So Vinson's debut justifiably stands amongst the most influential in the Court's history.

D. Modern: 1976–Present

We now come to the Modern era, beginning in 1976 after Stevens's debut. This period accounts for the rise of computerized legal research, previously "the exception rather than the norm."[51] As attorneys and judges have increasingly relied on legal databases like Westlaw and LexisNexis over the past fifty years, judicial citations to caselaw have consistently increased.[52] Recent debuts thus have the benefit of being more influential than their predecessors not only because they have not suffered the same precedential depreciation,[53] but also because they

48. *Id.* at 268–69.

49. *Id.* at 270.

50. *Id.* at 293–94.

51. Casey R. Fronk, *The Cost of Judicial Citation: An Empirical Investigation of Citation Practices in the Federal Appellate Courts*, 2010 U. ILL. J.L. TECH. & POL'Y 51, 61.

52. *Id.* at 69.

53. Landes & Posner, *supra* note 38, at 250–51.

come in a period where judges (aided by a growing stable of law clerks) write longer opinions that cite more and more caselaw.[54]

Judicial opinions, of course, are not the only source of increased caselaw citation during the Modern era. Just as judges (and their clerks) could more easily search for caselaw to cite in their opinions, so could legal academics and commentators writing in secondary sources. Adding to that, the Modern era witnessed an explosion in the number of law journals: from less than eighty in the 1950s to over 1,000 by the end of the 2000s.[55] This steady proliferation of secondary content provided an increasing outlet for caselaw citations—especially recent Supreme Court opinions ripe for discussion.

Table 7: Debuts by Subject, Modern Era

RANK	SUBJECT	NUMBER
1 *(tie)*	Procedure	6
1 *(tie)*	Statutory Interpretation	6
3	Economic Activity	1

The Modern era's thirteen debuts largely match the Court's current docket. Much of the Court's business today consists of resolving disputes about civil and criminal procedure and statutory interpretation issues. So these two topics understandably fill this period's debuts.

Noticeably absent from this list are constitutional law cases, though the Court obviously continues to hear them. They simply are fewer in number, often involving a complex, controversial issue ill-suited for a Justice's debut.

54. Montgomery N. Kosma, *Measuring the Influence of Supreme Court Justices*, 27 J. LEGAL STUD. 333, 341 (1998).

55. Steven Keslowitz, *The Transformative Nature of Blogs and Their Effects on Legal Scholarship*, 2009 CARDOZO L. REV. DE NOVO 252, 265 n.71.

Table 8: Rankings by Total Citations, Modern Era

RANK	JUSTICE	OPINION	SUBJECT	TOTAL
1 (1)	Roberts, C.J.	*Martin v. Franklin Capital* (2005)	Procedure *(Civil)*	5152
2 (3)	Breyer*	*Allied-Bruce Terminix v. Dobson* (1995)	Procedure *(Civil)*	3643
3 (4)	Souter	*Ford v. Georgia* (1991)	Procedure *(Criminal)*	2681
4 (6)	Alito	*Holmes v. South Carolina* (2006)	Procedure *(Criminal)*	2400
5 (12)	Sotomayor†	*Mohawk Industries v. Carpenter* (2009)	Procedure *(Civil)*	1144
6 (18)	Ginsburg*	*John Hancock v. Harris Trust* (1993)	Statutory Interpretation	839
7 (19)	Kagan*	*Ransom v. FIA Card Services* (2011)	Economic Activity *(Bankruptcy)*	760
8 (22)	Thomas	*Molzof v. U.S.* (1992)	Statutory Interpretation	562
9 (24)	Kennedy	*Bethesda Hospital v. Bowen* (1988)	Statutory Interpretation	521
10 (29)	Gorsuch	*Henson v. Santander Consumer USA* (2017)	Statutory Interpretation	453

This period's top five debuts all involve procedural issues. With holdings that cut across subjects, they understandably are heavily cited by courts and commentators alike.

Justices Samuel Alito and David Souter both debuted in cases cementing fundamental rules of criminal procedure. Writing for the Court in *Holmes v. South Carolina*,[56] Alito reaffirmed the principle that an arbitrary evidentiary rule acting to exclude important defense evidence violated a defendant's constitutional right to present a

56. Holmes v. South Carolina, 547 U.S. 319 (2006).

complete defense.[57] Meanwhile, Souter's debut in *Ford v. Georgia*[58] held that that a state may not find a postconviction petitioner's constitutional claim procedurally defaulted unless it does so based on a "firmly established and regularly followed" rule.[59]

The remaining debuts involve equally important matters of civil procedure. In *Mohawk Industries v. Carpenter*,[60] Justice Sonia Sotomayor explained that the collateral-order doctrine does not extend to disclosure orders adverse to the attorney-client privilege.[61] Though that specific holding is unimportant by itself, the opinion's analysis of the broader doctrine makes it a must-cite case for any litigant seeking interlocutory review.

Next, Justice Stephen Breyer's debut in *Allied-Bruce Terminix Companies v. Dobson*[62] opened the doors for broader use of private arbitration. There, Breyer wrote that the Federal Arbitration Act makes enforceable any arbitration provision in a contract affecting interstate commerce, even when the parties never contemplated such an effect.[63] *Allied-Bruce* effectively removed a substantial obstacle from judicial enforcement of arbitration provisions, increasing the continuing trend away from traditional civil litigation toward private arbitration. Breyer's debut thus remains a mainstay of the intense debate over the proper forum of civil dispute resolution.

Finally, Chief Justice John Roberts's first-place debut in *Martin v. Franklin Capital Corporation*[64] proves that if there's one thing attorneys love fighting over, it's fees. In *Martin*, the Court held that a district court generally may award attorney fees based on a wrongful removal "only where the removing party lacked an objectively reasonable basis for seeking removal."[65] Because of the issue's prevalence in modern civil litigation—not to mention the lawyerly allure of seeking fees—Roberts's debut logically rises to the top of the chart.

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57. *Id.* at 331.
58. Ford v. Georgia, 498 U.S. 411 (1991).
59. *Id.* at 423–24.
60. Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100 (2009).
61. *Id.* at 109.
62. Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995).
63. *Id.* at 278.
64. Martin v. Franklin Capital Corp., 546 U.S. 132 (2005).
65. *Id.* at 141.

E. Overall

Since the Founding, 114 Justices have debuted on the Court. Collectively, their debuts run the gamut of topics, but they coalesce around those general issues frequently reviewed by the Court over multiple eras.

Table 9: Debuts by Subject, Overall

RANK	SUBJECT	NUMBER
1 *(tie)*	Common Law	30
1 *(tie)*	Procedure	30
3	Economic Activity	26
4 *(tie)*	Constitutional Law	12
4 *(tie)*	Statutory Interpretation	12
6	Other	4

The data show that over 75 percent of Justices debuted in one of three topics—Common Law, Procedure, and Economic Activity—and at roughly equivalent levels. That percentage properly reflects how the Court's docket has shifted throughout its history.

Notably, Statutory Interpretation ranks far below these three topics, comprising roughly 10 percent of the debuts. As time unfolds and new Justices debut on the Court, this number should steadily rise. A staple of the modern Court's docket is mundane disputes over statutory interpretation, a prime candidate for a modern Justice's debut.

Table 10: Types of Debut

TYPE	NUMBER	PERCENTAGE
Unanimous	81	71.1%
With Concurring Opinion(s)	3	2.6%
With Dissenting Opinion(s)	18	15.8%
Seriatim	12	10.5%

The data also disprove the "legend" that "the brand-new Justice would be slated for an uncontroversial, unanimous opinion."[66] To be sure, the majority of Justices debuted in such a case. But not always. The 1925 Act period in particular was a divisive one for a debuting Justice. Of the twenty-eight debuts, only half were unanimous. The remainder were divided—two with at least one concurrence, twelve with at least one dissent.

66. Ruth Bader Ginsburg, *A Tribute to Justice Sandra Day O'Connor*, 119 HARV. L. REV. 1239, 1240 (2006).

Table 11: Rankings by Total Citations, Overall

RANK	JUSTICE	OPINION	SUBJECT	TOTAL
1	Roberts, C.J.	*Martin v. Franklin Capital* (2005)	Procedure *(Civil)*	5152
2	Vinson, C.J.*	*U.S. v. United Mine Workers* (1946)	Procedure *(Judicial)*	4153
3	Breyer*	*Allied-Bruce Terminix v. Dobson* (1995)	Procedure *(Civil)*	3643
4	Souter	*Ford v. Georgia* (1991)	Procedure *(Criminal)*	2681
5	Stevens	*Matthews v. Diaz* (1976)	Constitutional Law	2589
6	Alito	*Holmes v. South Carolina* (2006)	Procedure *(Criminal)*	2400
7	Van Devanter	*Lindsley v. Natural Carbonic Gas Company* (1911)	Constitutional Law	2001
8	Marshall, T.	*Mempa v. Rhay* (1967)	Procedure *(Criminal)*	1868
9	Rehnquist*	*Schneble v. Florida* (1972)	Procedure *(Criminal)*	1315
10	White	*Atkinson v. Sinclair Refining Company* (1962)	Economic Activity *(Labor & Employment)*	1314

And now, the main event: the most cited debuts. The top ten debuts overwhelmingly come from the Court's recent years, eight being from the last six decades. That is expected for three primary, and perhaps obvious, reasons. First, until the writ of certiorari, the Court could not control its docket. The majority of Justices thus debuted during a time when they were called upon to rule in insignificant cases that would never be heard by the modern Court. Today's cases, by contrast, generally raise issues of greater general importance to our legal system.

Second, precedent depreciates over time. That is so for several reasons. A newer ruling may overtake an older ruling. The law in a

particular area may become settled and thus less subject to dispute.[67] Or a change to statutory law may render an earlier precedent "obsolete."[68]

And third, the rise of computerized legal research during the Modern era supercharged judicial and secondary-source citations of caselaw. Certainly, this development allowed judges and commentators to more easily find a supporting opinion regardless of date. But in light of precedential depreciation, they reasonably would turn first to contemporary cases.

Logically, then, the top debuts would not come from older cases. That is precisely what makes the oldest debuts on this list the most impressive. Justice Byron White's debut in *Atkinson v. Sinclair Refining Company*[69] remains a consequential case not just to federal labor law, but also the law of arbitrability. As discussed earlier, the debut of Van Devanter—a Justice often derided today as one of the "Four Horsemen"—established the foundational concept of rational-basis review.

And nearly coming in first place was Vinson's debut in *United Mine Workers*. In his influential history of the Court, Rehnquist harshly criticized Vinson's performance as Chief Justice: Certain Chiefs were "outstanding administrator[s]" but not "able judge[s]"—or vice-versa—but "Vinson was neither."[70] Yet Vinson's debut cemented the inherent power of federal courts to hold parties in contempt for disregarding their rulings. Vinson's stint as Chief Justice may have been unmemorable, but his debut remains vitally important to the federal judiciary to this day.

Regardless of date, each of the top ten debuts share a common thread: Within their particular realm, they set important general principles of law. Most fall under the procedural rubric, and understandably so. Procedural cases, when compared to others, create broadly applicable rules relevant to a potentially huge swath of cases. These debuts will continue to gain citations until superseded by newer precedent or changes in law. So as new Justices join the Court, those assigned procedural debuts stand the best chance of having an influential debut.

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67. Fowler & Jeon, *supra* note 14, at 25.
68. Landes & Posner, *supra* note 38, at 269.
69. Atkinson v. Sinclair Ref. Co., 370 U.S. 238 (1962).
70. WILLIAM H. REHNQUIST, THE SUPREME COURT 149 (2001).

III. CONCLUSION

Historically, a Justice's debut is a moment destined to be forgotten. But such a fate is not inevitable. As this study shows, a number of Justices debuted in cases influential to procedure and constitutional law.

Of course, such debuts are not viewed this way contemporaneously. For example, here is how the *Augusta Chronicle* recognized Chief Justice Roberts's debut: "The chief's maiden opinion . . . understandably drew no attention at all. It is the court's venerable custom to give a newcomer a real dog, and *Martin v. Franklin Capital Corp.* was woof-woof all the way."[71] Yet of the Court's debuts, this "woof-woof" debut wins Best in Show.

So although we may not immediately view the Justices' debuts as important, the data demonstrate the top debuts' jurisprudential significance. These debuts continue to garner attention in the courts and commentary. Sure, they are not as exciting as those cases on the hot-button issues gripping the nation's attention, but they remain important in their own right.

The Justices' debuts may be forgotten, but some deserve to be remembered.

71. James J. Kilpatrick, *Slow Days Lately at the Land's Highest Court*, AUGUSTA CHRON. (Ga.), Mar. 5, 2006, at A5, 2006 WLNR 3794125.